

US District Court - Delaware
In Re Federal Mogul - Chapter 11

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1 settlement entered into, in the first instance?

2 A Was the settlement itself entered
3 into?

4 Q Yes.

5 A I believe it was signed January 15,
6 1993.

7 Q You were involved in the Georgine
8 settlement?

9 A I was. That's correct.

10 Q What was your role?

11 A I was one of the negotiators of the
12 settlement.

13 Q And when was Georgine -- when did
14 litigation over Georgine commence?

15 A The complaint was filed on
16 January 15, 1993.

17 Q Okay. And then the Third Circuit --
18 when did the Third Circuit rule?

19 A On what?

20 Q On the Georgine -- on the issue that
21 was ultimately appealed to the Supreme Court on
22 Georgine.

23 A I believe that the district court
24 issued its injunction and ruling in August of
25 1994.

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1 And I believe the Third
2 Circuit ruling reversing the district court
3 occurred sometime in the spring, in probably May
4 of -- well, no, let me take that back.

5 The injunction was in place
6 from August of '94 to roughly July of '97.

7 I guess the Third Circuit
8 decision, I think, was May of '96; but I'm not
9 sure about that.

10 Q And the Supreme Court's ruling on
11 Georgine was when?

12 A July of '97.

13 Q Okay.

14 A The ruling itself might have been
15 June of '97, but the -- it became effective in
16 July, I think.

17 Q Did you note whether Georgine had
18 any impact on claims filing rate -- whether the
19 existence of the Georgine settlement, while
20 litigation was pending, had any impact on claim
21 filing rates against CCR -- whether there were
22 more claims or fewer claims filed during that
23 time?

24 A The number of claims dropped
25 significantly as a result -- well, during the

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1 time of the Georgine injunction.

2 Q Okay. And --

3 A Because there was an injunction
4 against claims being filed against the CCR
5 members.

6 Q Okay. And in return -- as part of
7 the injunction, were plaintiffs who had claims,
8 in effect -- if the limitations period were to
9 run, the limitations tolled during the pendency
10 of the injunction?

11 A I believe it was under the terms of
12 the settlement, but I haven't looked at the
13 settlement for some time.

14 Q After the injunction, claims
15 filed -- because there was no longer an
16 injunction to filing claims, I assume claims
17 then began to increase against the CCR --

18 A Generally, what happened -- the
19 claims were filed, but against other defendants.

20 The CCR members were, in many
21 cases, being named in the cases but not served.
22 Or they were being named and served, but the
23 plaintiffs were agreeing not to prosecute the
24 action against the CCR defendants.

25 After the Georgine injunction

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1 was vacated, the CCR members were either brought
2 into the -- those pending cases as newly named
3 defendants; or if they were named previously,
4 they were served; or if they were named and
5 served, they were actually brought in as active
6 defendants.

7 So, it varied from case to
8 case.

9 But certainly, the vacation of
10 the Georgine injunction resulted in a large
11 surge of cases that had been previously filed
12 and were previously being litigated against
13 other defendants in litigation.

14 THE WITNESS: Would this be a
15 good time for a five-minute break?

16 MR. FRIEDMAN: Absolutely.

17 (A recess was taken from 10:28
18 a.m. until 10:41 a.m.)

19 BY MR. FRIEDMAN:

20 Q Mr. Hanlon, turning to the issue of
21 jury trials, if you would, against CCR members
22 at all -- do you recall if plaintiffs ever
23 introduced evidence as to whether an individual
24 member of CCR knew whether the
25 asbestos-containing products it manufactures or

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1 distributed was unreasonably dangerous or if
2 that was an issue that ever came up?

3 A Sitting here, I have no specific
4 recollection of any particular jury trial in
5 which that was an issue against any particular
6 member. I just don't have any recollection.

7 Q Okay.

8 A It wouldn't surprise me, but I don't
9 have any recollection.

10 Q When there were jury verdicts, I
11 assume the jury allocated liability among the
12 defendants whom it found there was liability
13 for; is that -- do you recall?

14 A Subject to the law of a particular
15 state, that would generally be the case.

16 Q Do you recall whether apportionments
17 among juries -- allocation among juries was
18 relatively consistent with the allocation the
19 CCR members had come up with for themselves?

20 MR. FINCH: Object to the
21 form, lack of foundation.

22 A I don't think it would be relatively
23 consistent or inconsistent.

24 It was a piece of information
25 that we took into account. So it might affect

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1 the share-adjustment process in terms of it
2 being a useful piece of data; but on a relative
3 basis, the number of jury trials and verdicts
4 was relatively infrequent compared to the vast
5 number of cases that were settled, and often the
6 subject of the particular circumstances of a
7 case and the vagaries of the jury system.

8 So while it was a piece of
9 relevant information, I don't think you could
10 ever really make a useful judgment as would be
11 consistent or not consistent with the sharing
12 process.

13 Q Mr. Hanlon, if I use the term
14 "unimpaired plaintiff" -- was that -- well, was
15 the term "unimpaired plaintiff" a term that was
16 used at CCR sometimes?

17 A Yes.

18 Q Do you have a recollection of what
19 that term was meant to reflect?

20 A Just what it says.

21 Q Would that be a plaintiff who had an
22 x-ray which a plaintiff's expert submitted
23 showed some radiographic evidence of asbestos
24 exposure, but without a PFT showing lung
25 impairment?

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1 MR. FINCH: Object to form.

2 A I think, generally, it was
3 understood to be a reference to plaintiffs who
4 had some kind of marker of asbestos exposure but
5 were not actually physically impaired, whether
6 the physical impairment level was measured by
7 PFTs or something else.

8 Q Okay. Do you know whether
9 unimpaired claimants, using that definition,
10 made up an increasing percentage of claimants
11 against CCR members over time?

12 A I hesitate because I -- I think the
13 issue of unimpaired plaintiffs was always a
14 significant issue.

15 And I don't know that it was
16 an increasing issue or whether the focus of
17 concern simply increased over time, even though
18 the numbers remained relatively constant.

19 My recollection is that there
20 were -- you know, going back to the early '90s,
21 indeed, that was what led to the negotiations
22 that led, eventually, to the transfer of all the
23 cases in the federal system to an MDL court and
24 ultimately to settlement discussions of global
25 settlement of all defendants and of all

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1 plaintiffs, out of which the Georgine settlement
2 came.

3 So I think the -- you know, if
4 there were concerns about increasing number of
5 mass numbers of unimpaired plaintiffs, it goes
6 back to the '80s and early '90s.

7 I'm not sure it became any
8 worse in the mid- to late '90s.

9 So it all depends on what
10 point in time, and I don't have a specific
11 recollection of how the numbers worked, what the
12 perceptions were at particular points in time.

13 Q Do you recall what happened -- from
14 your experience with CCR, do you recall what
15 happened to cases that were in the federal --
16 unimpaired claimants whose cases were in the
17 federal system?

18 A I don't know that anything happened
19 to a particular class of unimpaired plaintiffs.

20 But generally, Judge Wiener
21 implemented a case management program that
22 focused on the more serious cases.

23 And I think it's fair to say
24 that, by and large, it was only the more serious
25 cases that were remanded back to courts for

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1 trial.

2 Q Do you know if plaintiffs were
3 generally aware of the "named only" provision
4 for CCR allocation purposes -- plaintiffs'
5 lawyers?

6 A I don't know that.

7 Q If plaintiffs were named --

8 A By "plaintiffs," I take it you mean
9 "plaintiffs' counsel" --

10 Q I mean "plaintiffs' counsel."

11 A Right.

12 Q Do you know whether, if the
13 plaintiffs' bar -- if an individual plaintiff
14 named more CCR members in a complaint, would
15 that have an impact on the amount of
16 compensation that claimant would receive?

17 A Well, not without more -- no, it
18 shouldn't have, and it wouldn't -- we worked
19 hard to make sure that there were not abuses of
20 our "named only" sharing formula.

21 And the Center did not pay
22 anything based simply on the number of namings.

23 Q Are you familiar with the term
24 "inventory settlement"?

25 Is that a term that you would

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1 ever use --

2 A Yes.

3 Q -- the CCR?

4 Can you describe what an
5 "inventory settlement" is?

6 A Generally, it referred to a
7 settlement of all or virtually all of the claims
8 represented or being the inventory of a
9 particular plaintiff's counsel.

10 Q Would you say that inventory
11 settlements were used throughout CCR's
12 existence, or were they used more towards the
13 latter -- towards, let's say, the period 1998 to
14 2001?

15 A There were certainly inventory
16 settlements with particular plaintiffs' counsel
17 that were entered into throughout the life of
18 the CCR, I'd say.

19 Q Can you say whether they were used
20 with more frequency -- post Georgine than in the
21 time pre Georgine?

22 A I'm not sure I could answer that.

23 There was a particular
24 settlement program known as the "SSP" settlement
25 program in the late '90s, after the Georgine

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1 injunction was lifted, that resulted in a very
2 substantial number of inventory settlements.

3 But I don't recall how that
4 total number of inventory settlements that were
5 implemented as part of that program compares to
6 the previous inventory settlements entered into.

7 And so, there were a
8 significant number of inventory settlements
9 entered into in connection with Georgine back in
10 the '93-'94 period.

11 Q Can you explain to me what the use
12 of the Strategic Settlement Program, the
13 "SSP" -- what was that?

14 A I just did.

15 It was a particular settlement
16 program that the Center entered into following
17 the lifting of the Georgine injunction -- in
18 part, to address the large numbers of cases that
19 were then facing the members.

20 And they were, generally,
21 inventory settlements with particular
22 plaintiffs' counsel that attempted to resolve
23 all or virtually all of the cases represented by
24 those counsel -- on certain terms, including
25 payment over time and, generally, ceratin

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1 medical criteria that would define the levels of
2 compensation for the claimants represented by
3 their plaintiffs' counsel.

4 Q Would you say that the CCR was able
5 to reach agreement with many of the plaintiffs'
6 firms which had the largest inventory of claims?

7 A It did reach agreements with a
8 number of plaintiffs' counsel representing a
9 significant number of claimants, but it also
10 failed to reach agreement with a number of
11 significant plaintiffs' counsel who represented
12 a large number of claimants.

13 Q When it failed to reach agreement,
14 did those cases generally -- through an SSP
15 agreement -- were those cases settled in other
16 ways or did those cases go to trial, generally?

17 A I think, generally, the number of
18 cases that actually went to trial remained a
19 relatively small percentage.

20 But I'm sure the Center did
21 both.

22 It settled those cases
23 individually or in smaller groups; and from time
24 to time, it also began -- occasionally went to
25 verdict and trials.

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1 Q Was there a component of the SSP
2 that sought to resolve future claims?

3 A Yes.

4 Q Can you tell me about that, please?

5 A Generally, I can. I'd have to look
6 at the particular agreements.

7 But generally, in connection
8 with the inventory agreements that were entered
9 into as part of the SSP program, the Center
10 sought, as a condition of the settlement, a
11 commitment on the part of the plaintiffs'
12 counsel to recommend to his future clients that
13 they settle their cases with the CCR on
14 comparable terms to the terms that were
15 negotiated for the present claimants represented
16 by that counsel.

17 Q Was there a period of time over
18 which these future -- you know, over which the
19 future claims were supposed to be resolved?

20 Was it, you know, claims going
21 up to 2002? 2003? 2004? Do you recall what the
22 duration was?

23 A I think these agreements -- you
24 know, they were negotiated separately with each
25 plaintiffs' counsel. And so, they varied by

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1 each plaintiffs' counsel.

2 But generally, part of the
3 negotiation was to negotiate with that
4 plaintiffs' counsel a certain case flow with
5 respect to his future claims over time, so that
6 the Center would have some predictability with
7 respect to that particular plaintiffs' counsel
8 as to the total amount of dollars that it would
9 be paying in settlement to that plaintiffs'
10 counsel for its claims -- or at least some cap
11 on the volume of dollars it would be paying in
12 settlement to that plaintiffs' counsel.

13 Q Do you know, were the values for
14 future claims substantially greater than for
15 pending claims?

16 A I don't believe they were, no.

17 Q Did CCR believe that, in fact,
18 plaintiffs would recommend to their future
19 clients that they enter into these kinds of
20 settlements?

21 A I don't know what you mean by --
22 "plaintiffs," generally? I mean, some did and
23 some didn't.

24 Q Did CCR believe that the plaintiffs'
25 firms were, in fact, going to recommend to their

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1 clients that they enter into terms in accordance
2 with the provisions about future plaintiffs?

3 A I'm not -- I'm struggling, because
4 I'm not sure exactly what you mean by the "CCR"
5 or by "belief."

6 But if you're talking about
7 the -- the Center staff were negotiating these
8 settlements, I believe that, generally, yes,
9 they believed that the plaintiffs' counsel would
10 recommend these settlements to their future
11 clients.

12 Q Were the future provisions an
13 important part of the SSP settlements?

14 A Yes, they were.

15 Q Did plaintiff counsel represent
16 that, in fact, they intended to recommend to
17 their clients that they enter into the
18 agreements -- you know, the future provisions
19 regarding the agreements?

20 A Those that signed these agreements
21 did, I believe so, yes.

22 Q Did you essentially see that as
23 setting a market for the price of future -- the
24 value of future claims, at least in terms for
25 the duration of the agreements?

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1 MR. FINCH: Objection; form.

2 A No -- I don't know what you mean by
3 "market."

4 If you mean market across the
5 country or something, no.

6 Q But for the particular firm with
7 which you were settling cases --

8 A I don't know what you mean by
9 "market."

10 The agreements speak for
11 themselves. You have them.

12 They basically were an offer
13 to settle cases represented by that plaintiffs'
14 counsel for particular dollars at particular
15 disease levels, based on medical criteria -- the
16 disease levels, the number of cases, and the
17 medical criteria negotiated.

18 And they were agreed to on
19 behalf of the present claimants.

20 And the plaintiffs' counsel
21 agreed to recommend the same terms to its future
22 claimants.

23 And -- you know, each deal
24 speaks for itself.

25 MR. FRIEDMAN: I'd like to

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1 show you what has been marked as
2 "Confidential," CCRFM000269.
3 I just note -- it's stamped
4 "Confidential"; but obviously, this
5 document is confidential, provided to us
6 by the CCR. So we will treat it as --

7 MR. WYNER: Are you marking
8 this?

9 MR. FRIEDMAN: Yes. We'll
10 mark it as Exhibit 2.
11 (Whereupon, Hanlon Deposition
12 Exhibit No. 2 was marked for
13 identification.)

14 BY MR. FRIEDMAN:

15 Q Mr. Hanlon, if you would take a look
16 at this document -- it says "CCR Settlement
17 Agreement" and indicates that it's between
18 Peter T. Nicholl and Joseph Rice, Esquire, on
19 the one hand, and the Center for Claims
20 Resolution as sole agent for its 16 member
21 companies.

22 Do you recall ever having seen
23 this document before?

24 A Yes.

25 Q And do you recall whether this was

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1 part of the SSP -- this agreement was entered
2 into as part of the SSP?

3 A Do I recall that, or was it?

4 Q Was it.

5 A I believe it was.

6 Q Okay. On page 3 there are -- and it
7 says: "Pending reconciliation, the Present
8 Plaintiffs that are subject to this Agreement
9 consist of the following disease mix..."

10 And it lists the number of
11 plaintiffs claiming each disease mix.

12 Would "Non-Malignant II"
13 generally accord with CCR's understanding of
14 what an "unimpaired plaintiff" was?

15 A I'm not sure that I can say yes to
16 that.

17 Generally, what was negotiated
18 was medical criteria that would distinguish two
19 levels of non-malignant claims.

20 And there were negotiations
21 over those criteria.

22 And I'm sure that if the
23 Center was free to write the criteria on its
24 own, it would have written much stricter
25 criteria. But it had to negotiate an agreement

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1 with the plaintiffs.

2 So it was an agreed set of
3 criteria to distinguish between two kinds of
4 non-malignant claims.

5 But I don't think that, you
6 know, the criteria in any particular agreement
7 represented the Center's view as to what was
8 unimpaired or not unimpaired.

9 Q Does looking on page -000294, which
10 the Bates number, under Roman numeral III...

11 So for "Non-Malignant II," a
12 plaintiff had to have an x-ray reading of 1/0 or
13 higher on the ILO scale and --

14 MR. FINCH: "...or bilateral
15 pleural plaques or bilateral pleural
16 thickening..."

17 Q -- or bilateral pleural plaques, or
18 both --

19 "...together with medical
20 evidence showing that the Plaintiff's
21 non-malignant condition is causally related to
22 asbestos exposure. These Plaintiffs do not,
23 however, have to meet the Pulmonary Function
24 Testing requirements..." that are defined
25 elsewhere.

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1 So is that -- just so I
2 understand, does that differ from what you were
3 describing before as your understanding of
4 "unimpaired"?

5 MR. FINCH: Object to form.

6 A I don't understand your question.

7 Q Okay. I had asked you before how
8 you defined -- what the general definition of --
9 if I used the term "unimpaired plaintiff" --

10 A I think you asked me for my
11 understanding of it.

12 Q Okay.

13 A I don't have a definition, but I
14 gave you my understanding of it.

15 Q Okay.

16 A If you're asking me whether these
17 criteria define it, my answer is similar to the
18 answer I just gave you -- that I -- what these
19 criteria were meant to do was to at least
20 provide some criteria for impairment.

21 But whether these particular
22 criteria define "impaired" versus "unimpaired"
23 in the mind of the CCR or the mind of the
24 plaintiffs' counsel is something you'd have to
25 ask them.

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1 This was a negotiated
2 document; and the Center would always push for
3 more strict criteria, and the plaintiff would
4 always push for less criteria.

5 Q You know, were the medical standards
6 consistent throughout the agreement to the SSP,
7 in your recollection, or were they subject to
8 different standards in different cases?

9 A I'm not -- I was not directly
10 responsible for the criteria or for negotiating
11 the criteria.

12 I would suspect that they were
13 generally consistent across the SSP agreement.

14 I would suspect that there
15 were some differences between the SSP criteria
16 and the Georgine criteria.

17 But again, I'm not an expert
18 on the criteria. And they were, in each case,
19 the subject of negotiations.

20 So there could be changes,
21 even across the SSP agreement.

22 Q On page -281, Section 14 -- is this
23 one of the sections that deals with the
24 resolution of future claims?

25 A It appears to be, yes.

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1 Q And in paragraph 15, it indicates
2 that -- the settlement values are blocked out.

3 And then at the end of
4 paragraph 15, it indicates that if there was an
5 increase or decrease in the number of companies,
6 members of the CCR, that values might be
7 negotiated.

8 A "Re-negotiated."

9 Q "Re-negotiated."

10 And the basis for that would
11 be a diminution -- essentially, if there were --
12 if a member who had an allocation percentage
13 left, the renegotiation would be intended to
14 reflect claim values that, in turn, reflected
15 the departure of a particular company; is that
16 correct?

17 MR. FINCH: Object to form.

18 A I think so.

19 I mean, generally, the idea
20 was that if the CCR added new members, that the
21 settlement numbers should be renegotiated to
22 reflect any additional liability presented by
23 that new member.

24 By the same token, if the
25 Center lost one or more members during this

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1 period of time and the original number reflected
2 some liability attributable to that particular
3 member who left, that the number should be
4 renegotiated to reflect the absence of that
5 member, so that the CCR should pay less.

6 And it's not trying to get
7 that member released. But there would be issues
8 about whether -- if that member left because of
9 bankruptcy or for some other reason, whether the
10 value of the claim against the remaining members
11 really changed or not.

12 And that's why these things
13 are subject to renegotiation.

14 Q And then it says -- separately, with
15 any current member that is not then a member
16 company, on compensation amounts for these
17 medical categories that fairly reflect the
18 increase or decrease in the membership of the
19 CCR.

20 So, was it part of the
21 negotiations that if a company left the CCR they
22 would still be able to resolve future claims,
23 based on the terms of these agreements?

24 A I think that varied by agreement.

25 But this agreement appears to

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1 be one where the companies on whose behalf it
2 was negotiated did retain some right, pursuant
3 to this provision, to resolve future claims with
4 this counsel, subject to this provision, even if
5 they subsequently left the CCR.

6 Q Do you remember if that was
7 frequently a part of SSP agreements, that
8 individual members would be able to negotiate
9 future agreements, essentially, under the same
10 or similar terms to the SSPs?

11 A I don't remember how frequent that
12 was.

13 I remember it was an issue
14 that came up.

15 And because of concerns on the
16 part of some members that they not lose the
17 benefit of these agreements with respect to
18 future claims in the event they left the center,
19 an effort was made in particular circumstances
20 to try and negotiate a provision like this.

21 But I don't have a better
22 recollection of it than that.

23 Q Okay. Do you recall the issue of
24 extraordinary claims under the SSP?

25 A I just saw the reference to

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